

Order

**Michigan Supreme Court
Lansing, Michigan**

October 16, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2007-12

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Amendment of Rule 2.107 of the
Michigan Court Rules
(to allow e-discovery and
to clarify filing requirements)

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 2.107 of the Michigan Court Rules are adopted, effective January 1, 2008.

[Additions are indicated by underline, and deletions by strikethrough.]

Rule 2.107 Service and Filing of Pleadings and Other Papers

(A)-(B)[Unchanged.]

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means

- (a) handing it to the attorney personally;
- (b) leaving it at the attorney's office with the person in charge or, if no one is in charge or present, by leaving it in a conspicuous place; or
- (c) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there.

- (2) Delivery to Party. Delivery of a copy to a party within this rule means
 - (a) handing it to the party personally; or
 - (b) leaving it at the party's usual residence with some person of suitable age and discretion residing there.
- (3) Mailing. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.
- (4) E-mail. Some or all of the parties may agree to service by e-mail by filing a stipulation in that case. E-mail service shall be subject to the following conditions:
 - (a) The stipulation for service by e-mail shall set forth the e-mail addresses of the parties or attorneys that agree to e-mail service, which shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission.
 - (b) The parties shall set forth in the stipulation all limitations and conditions concerning e-mail service, including but not limited to:
 - (i) the maximum size of the document that may be attached to an e-mail;
 - (ii) designation of exhibits as separate documents;
 - (iii) the obligation (if any) to furnish paper copies of e-mailed documents; and
 - (iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.
 - (c) Documents served by e-mail must be in PDF format or other format that prevents the alteration of the document contents.

- (d) A paper served by e-mail that an attorney is required to sign may include the attorney's actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 2.114(C) and (D).
- (e) Each e-mail that transmits a document shall include a subject line that identifies the case by court, party name, case number, and the title or legal description of the document(s) being sent.
- (f) An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday. Service by e-mail under this subrule is treated as service by delivery under MCR 2.107(C)(1).
- (g) A party may withdraw from a stipulation for service by e-mail if that party notifies the other party or parties in writing at least 28 days in advance of the withdrawal.
- (h) Service by e-mail is complete upon transmission, unless the party making service learns that the attempted service did not reach the e-mail address of the intended recipient.
- (i) The e-mail sender shall maintain an archived record of sent items that shall not be purged until the conclusion of the case, including the disposition of all appeals.

(D)-(F) [Unchanged.]

- (G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the clerk of the court, except that the judge to whom the case is assigned may accept papers for filing when circumstances warrant. A judge who does so shall note the filing date on the papers and transmit them forthwith to the clerk. It is the responsibility of the party who presented the papers to confirm that they have been filed with the clerk. If the clerk docket papers on a date other than the filing date, the clerk shall note the filing date on the register of actions.

Staff Comment: The amendments allow parties to stipulate to agree to e-discovery, or service of papers among the parties, by e-mail. Further, the amendments require that court clerks note the date pleadings are filed if that date is different than the date the filing is docketed.

The e-discovery rules allow parties or those represented by attorneys to stipulate to service by e-mail. The stipulation establishes the maximum document size, the designation of exhibits as separate documents, the persons who are entitled to receive an e-mailed document other than the party or attorney, and the obligation, if any, to furnish paper copies of e-mailed documents. The rule also requires that the subject line of an e-mail that contains a document or has a document attached indicate the court, case number, party name, and title of the document being sent. Documents are required to be in a format, such as PDF, that precludes alteration, and a designation of “s/” or “/s/” is sufficient for a signature. Documents e-mailed after 4:30 p.m. Eastern Time are considered filed the next day, and service by e-mail is equivalent to service by delivery. Service is complete upon transmission, unless the sender receives notice that the e-mail did not reach the intended e-mail address. An e-mail sender is required to maintain an archived record of sent items until the case concludes, including the disposition of all appeals.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 16, 2007

Corbin R. Davis
Clerk